

CITY OF MILPITAS
PLANNING COMMISSION
BYLAWS



June 2017

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PLANNING COMMISSION
BYLAWS

<object>

October 2004

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**BYLAWS
of the
CITY OF MILPITAS PLANNING COMMISSION**

The following Bylaws of the Planning Commission of the City of Milpitas (the “Planning Commission”) were approved by the City Council of the City of Milpitas by adoption of Resolution X, as amended by X. In addition to the rules and procedures set forth herein, the Planning Commission is likewise governed by the Brown Act, the Public Records Act, and all other applicable statutes and laws.

Section 1 - Preface

Milpitas Municipal Code (“MMC”) Title I, Section 500, governs the formation and operation of the Planning Commission. Per MMC Section I-500-1.08, the Planning Commission shall adopt written rules and regulations as to the time, place and date of its regular meetings and shall adopt such rules and regulations as it deems necessary to conduct its business including rules of procedure. Such rules and regulations shall not be inconsistent with the laws of the State of California or with the ordinances, resolutions or regulations of the City of Milpitas. These bylaws are prepared to serve this purpose. Any modifications to these provisions must be consistent with the underlying Code provisions, as well as all applicable laws.

The City Council of the City of Milpitas established the Planning Commission and granted to it responsibilities in the area of land use, redevelopment issues, and planning permit decisions. These bylaws are intended to assist and be used by the Planning Commission in performing its duties and conducting its meetings. If a conflict arises between these bylaws and the MMC, the MMC shall control.

Section 2 - Commission Officers and Duties

2.01 Officers

The officers of the Planning Commission shall consist of a Chair, Vice-Chair, and a Secretary.

2.02 Selection

At its first regular meeting held for the transaction of business during July, or as soon thereafter as may be possible, the Planning Commission shall elect a Chair and a Vice Chair for such fiscal year. When a vacancy exists in the office of Chair or Vice Chair, the Planning Commission shall elect a member to serve in such capacity for the remainder of the fiscal year. The City of Milpitas staff liaison to the Planning Commission shall serve as the Planning Commission Secretary. The Secretary shall preside over the elections of the Planning Commission officers. Election of the officers shall be placed on the agenda after approval of the agenda.

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Section 2 – Adoption and Amendment¶

¶ Planning Commission Adoption and Amendment¶

These bylaws shall be adopted by and may be amended by resolution of a majority of the Commissioners present at any Milpitas Planning Commission meeting. ¶

¶ City Council Adoption and Amendment¶

Upon adoption or amendment by the Planning Commission, such bylaws shall be submitted to the City Council for review. The City Council shall have the power to approve, disapprove or modify said bylaws, as it deems necessary. ¹⁴

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¶

Section 3 - Membership¶

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3.01 Composition ¶

The Planning Commission shall consist of seven (7) members. The initial selection of the members shall be as set forth in a resolution approved by the City Council. Thereafter, the members shall be appointed by the majority of the City Council. ¹⁵

¶

3.02 Qualifications¶

At all times during the term of office, a Planning Commissioner shall be a registered voter of the City of Milpitas and a resident of the City of Milpitas. A Planning Commissioner shall not hold any other public office or employment in the government of the City of Milpitas. ¹⁵

¶

3.03 Application for Appointment¶

All applications for Planning Commissioners may be reviewed by any City Councilmember. In addition to any other process for the selection of Planning Commissioners, any City Councilmember may recommend to the Mayor a candidate for appointment to the Planning Commission from the entire pool of applicants. ¹⁵

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3.04 Terms of Office ¶

The term of office for each Planning Commissioner shall be three (3) years, commencing on the first day of January and concluding on the 31st day of December of the third year thereafter. These regulations intend to preserve the concept ¶ ...

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¶ Subcommittee Term¶ ...

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2.03 Duties

The duties of the Planning Commission officers shall be as follows:

Chair

The Chair shall preside over all meetings of the Planning Commission.

Vice Chair

The Vice-Chair shall assist the Chair in the execution of his or her office and act in his or her absence.

Secretary

It shall be the duty of the Secretary to keep records of all meetings of the Planning Commission.

Section 3 - Meetings

3.01 Regular Meetings

The Planning Commission regular meetings shall generally be the 2nd and 4th Wednesdays of each month at 7:00 p.m. in City Hall. The Planning Commission shall generally hold at least one (1) meeting per month. At the last regular meeting of the calendar year, the Planning Commission shall approve a meeting schedule for the upcoming year, which calendar may be subsequently amended if necessary.

3.02 Special Meetings

Special meetings of the Commission are meetings called in addition to those on the approved meeting schedule. Special meetings may be called by the Chair with the consent of at least three (3) other members or called with the consent of four (4) members of the Commission. The Brown Act requires the agenda for special meetings to be posted twenty-four (24) hours prior to the meeting. It is a policy of the Planning Commission to provide seventy-two (72) hours notice for special meetings when possible to allow staff to prepare appropriate support materials. However, lack of seventy-two (72) hour notice will not preclude action if the Brown Act notice requirements are met.

3.03 Other Meetings

Workshops, study sessions, and retreats are meetings convened for informational purposes, Planning Commission training, and study sessions and do not require the Planning Commission to take any action.

3.04 Attendance and Punctuality

Commissioners are expected to arrive on time and be present for the entire meeting. Commissioners are important City officials whose actions and decisions impact the quality of life in the city. Therefore, only in rare, unavoidable circumstances should Commissioners miss meetings or workshops. Three (3) or more unexcused absences from meetings and/or workshops during a calendar year shall be reported to the City Clerk, who notifies the City Council of the Commissioner's attendance record. The City

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¶ 6.01 General Duties¶

The Planning Commission is the Planning agency for the City of Milpitas. The Planning Commission shall perform all of those duties related to planning and land use, which have been delegated to it by the City Council. These duties are set out in Title XI, Chapter 1 (subdivisions) and Title XI, Chapter 10 (zoning) of the City of Milpitas Municipal Code, and include such actions as making decisions on use permits, site and architectural reviews, variances, making recommendations on general plan, specific plan and zoning amendments, and participating in the CEQA compliance process. ¶

¶ Each Planning Commissioner and the Planning Commission shall have the following duties and powers: ¶

¶ Those specifically authorized by the law of the State of California. ¶

Such duties as are assigned to the Planning Commission by minute action, resolution, or ordinance of the City of Milpitas. ¶

Such powers as are reasonable and necessary in order to enable the Planning Commission to fulfill and carry out its planning functions (see Government Code, Section 65102). ¶

Such powers as are reasonable and necessary in order to enable the Planning Commission to advise the City Council with respect to redevelopment functions set forth in the Health and Safety Code. (...)

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Council may choose to subsequently review of the Commissioner's performance to determine any extraordinary reasons or other explanations for the Commissioner's unexcused absences.

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3.05 Quorum

A meeting cannot be conducted without a quorum of the Planning Commission. If enough Commissioners abstain due to a conflict of interest so as to lose a quorum, the Commission shall exercise the rule of necessity to regain a quorum, as allowed by law. Otherwise disqualified Commissioners shall be chosen by a draw of straws until a quorum is reached. The Commissioner so chosen shall continue to participate in that matter until it is concluded.

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Section 4 – Agendas and Minutes

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4.01 Agenda Preparation and Distribution

Not less than nine (9) days prior to any regular scheduled meeting, the secretary of the Commission shall endeavor to prepare an agenda which shall list all matters to be considered by the Commission at the meeting for which the agenda is prepared. The agenda shall ideally be distributed no less than five (5) days prior to the scheduled meeting to all members of the Commission, staff, anyone requesting such agenda and to other persons as the Commission and City Council may direct. Agendas shall be provided as required by the Brown Act.

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4.02 Agenda Contents

The agenda shall contain the place, date and time of the meeting and items to be discussed at the meeting, consistent with the Brown Act.

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Items can be placed on the agenda by staff as part of their responsibility in reviewing planning applications and administering city projects.

Any Commissioner may request an item be placed on a future Commission agenda. Staff shall advise the Commission how much time may be necessary to prepare background materials related to the requested item and when the next available agenda opening would be. By majority vote, the Planning Commission may place the requested item on a future available agenda, providing at least seventy-two (72) hours prior to the meeting at which such item shall be considered in order to comply with the Brown Act and allow staff to prepare appropriate support materials. Items requiring additional public noticing will be placed on the next available agenda.

Deleted: In addition, the City Attorney may recommend, where appropriate, pending litigation matters be placed on the agenda as closed session items, consistent with the Brown Act. ¶

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4.03 Minutes

The Planning Commission shall keep a record of its resolutions, transactions, findings and determinations. The Secretary shall maintain minutes of all proceedings. The meeting agenda and minutes are a public record and shall be available for inspection.

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Items of "immediate need" may be added to the agenda at the same meeting, subject to the provisions of the Brown Act. 2 ¶

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The minutes shall reflect the maker of the motion and the second for all actions. The vote of each Commissioner shall be recorded in the minutes.

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Section 5 – Meeting Conduct

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5.01 Purpose

The Planning Commission is a public agency with land use planning and decision-making duties. It is the policy of the Planning Commission to encourage free and open discussion of issues on a Planning Commission meeting agenda, but also to ensure that the Commission completes the agenda in a timely manner and in a process that accords courtesy and respect to all participants.

5.02 Rules

Robert’s Rules of Order, Revised, except where inconsistent with the express provisions of law, these bylaws, or other resolutions of the Commission, shall govern the conduct of meetings of the Commission.

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5.03 Close of Public Hearing

No evidence shall be taken after the public hearing is closed on a matter.

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5.04 Addressing the Commission

As per the Brown Act, the public may comment on any agenda item, however shall do so in the following manner:

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Each person addressing the Commission is requested, but not required, to give his/her name and address in an audible tone of voice for the record and to provide the same on a speaker register used to prepare the meeting minutes. The speaker is requested to state whether he or she is appearing as a representative or in a professional capacity such as an attorney, engineer, etc., and to state the name of the individual or organization he or she is representing, if applicable. Unless additional time is granted by the Chair, all remarks shall be limited to three (3) minutes and shall be addressed to the Commission as a body and not to any individual member thereof. The Chair may limit repetitive testimony in the interest of time. No person, other than members of the Commission and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Commission, except through the Chair. Any person who wishes to address the City Attorney or staff shall do so through the Chair and not pose questions or remarks to the Attorney or staff directly.

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5.05 Motions

When making a motion, the following options are available:

- (a) Deny without prejudice
- (b) Deny with prejudice
- (c) Approval
- (d) Approval with conditions

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(e) Continue (table)

5.06 Voting

The Chair has the right to vote and make a motion on any issue before the Commission.

The vote of all Planning Commissioners, including the Chair, shall be recorded and no vote shall be taken in secret. All Planning Commissioners shall vote on an item when legally able to do so.

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5.07 Super-Majority Vote

Some planning actions, such as approval recommendations for general plan or specific plan amendments, require a super-majority vote, i.e., the affirmative vote of not less than a majority of the total membership of the Planning Commission. The super-majority vote requires the affirmative vote of four (4) of the seven (7) Planning Commissioners.

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5.08 Tie-Vote, Lack of Majority Vote

A tie-vote occurs when there is an equal number of Commissioners who voted in favor of a motion as have voted not in favor of a motion, such as a 3-3 vote. A lack of majority vote occurs when less than half of the votes cast support the motion, such as a 3-4 vote.

When either a tie-vote or lack of majority vote occurs, the motion fails, thereby resulting in no action. A majority vote is necessary to take action on an item, regardless of whether the Planning Commission has final authority or advisory authority.

In all cases, the Planning Commission shall work towards formulating a majority recommendation. If this cannot be achieved, the Planning Commission shall clearly summarize their issues to provide direction to the applicant or to the City Council.

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In the event of a tie-vote, the Planning Commission may consider continuing the item in order to obtain of a majority vote. However, the tie-vote shall be resolved in a timely manner to ensure no project is inadvertently deemed approved under the Permit Streamlining Act.¶

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The failure of the Planning Commission to make a majority recommendation to the City Council regarding amendments to the General Plan results in the item not going forward to the City Council, unless the applicant appeals.

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5.09 Abstentions

Prior to taking action, the Commission must receive and weigh all presented evidence and testimony. In cases where a Commissioner is not present for public testimony on an item, the Commissioner should abstain from voting. This notwithstanding, in cases where an item has been continued from a meeting at which a decision-maker has been absent, the decision-maker can review the videotape of the meeting or the meeting minutes and participate in the continued hearing and vote.

A Planning Commissioner abstaining from voting shall state a reason.

Deleted: The abstention shall generally be counted as a vote with the majority. Examples of abstentions that would not be recorded as a vote for the motion include, but are not limited to, abstentions due to a conflict of interest, when an affirmative vote is required for the matter, or if the abstention would break a tie vote.

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5.10 Passing the Gavel

When neither the Chair nor the Vice Chair is present or able to vote due to a conflict of interest, the gavel shall be passed to the Commissioner with the longest years of service as the Chair Pro Tempore with authority to preside over the meeting and/or the agenda item.

5.11 Seating Arrangement

To encourage the integration of recently appointed Commissioners, a meeting seating arrangement shall be established by the Chair.

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5.12 Exhibits

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All exhibits filed in connection with any pending matter become part of the record of the proceedings and shall be retained subject to compliance with applicable records retention policies of the City.

5.13 Order of Procedure, Public Hearing Guidelines

The following guidelines are for general agenda items. Variations on the guidelines for public hearing items are noted in parentheses.

- Staff report
- Clarifying questions to staff
- Applicant presentation
- Clarifying questions from Commissioners to Applicant
- Public comment on item (Chair opens public hearing)
- Applicant responds to questions, comments for clarification, amplification (Close public hearing by motion of Commission)
- Commissioners deliberate, discuss the item
- Commissioners vote

The Chair may vary the order otherwise provided above.

5.14 Reports by Staff or its Consultants

Written reports by staff or its consultants shall be considered a part of the official record of the proceeding to which they relate. Copies of any such written report shall be made available to the public at any hearing held on the proceeding to which such report relates.

Section 6 – Commissioner Conduct

6.01 Purpose

The Planning Commission recognizes that differences of opinion are inherent in its land use subject matter and duties, whether they are differing opinions among Commissioners, or, between Commissioners and staff, or Commissioners and the public. The Commission also recognizes that discussion and resolution of such differences are often the basis for crafting land use decisions that are most appropriate for the City and its neighborhoods. It is the policy of the Planning Commission to recognize such differences and to provide a forum that allows them to be expressed in a respectful, courteous manner.

6.02 Recognition from Chair to Make Remarks

A Commissioner shall obtain recognition from the Chair and address all remarks including those to staff and the City Attorney to the Chair. Once a Commissioner has the floor, questions to the City Attorney and staff shall be directed through the chair.

6.03 Appropriate Remarks

A Commissioner should confine remarks to the merits of the pending question. All statements should have bearing on the adoption of the immediately pending question.

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The Commission may require a notice in addition to that required by law. In such cases, the Chair shall direct that notice be given by a specified method. Failure to provide this additional notice shall not be grounds for the Planning Commission to deny or not consider the request.¶

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A Commissioner should refrain from offensive remarks directed towards another Commissioner or staff.

A Commissioner should not read lengthy passages from reports, books, quotations, etc., without permission of the Commission.

6.04 When to Withdraw a Motion

The maker of a motion who no longer supports his or her motion should ask permission to withdraw the motion. The maker of a motion may vote against the motion but cannot speak against it.

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6.05 Courtesy to Others

A Commissioner should refrain from disrupting the Commission and give courteous attention to other speakers.

No member should speak a second time on a question if any member who has not yet spoken on the question wants to do so.

A Commissioner should be open to all concerns and listen to all participants with an open mind, even if he or she disagrees with them.

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6.06 Ex-parte Communication

Commissioners are discouraged from suggesting any change to any project to the applicant or staff, before the project is considered by the Commission as a whole. In addition, to ensure that all Commissioners receive the same information relative to a project that will be reviewed by the Commission, third party contacts are discouraged. Any such communications must be disclosed by the Commissioner at the Commission meeting, prior to the item being considered.

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6.07 Communications with the Press

When speaking to the press, Commissioners shall clearly state that they are speaking for themselves only and not for the Commission as a whole.

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6.08 Professionalism

Commissioners are expected to exhibit a professional demeanor during public meetings at all times, to ensure decorum and respect to fellow Commissioners, City staff and the public.

6.09 Continued Training

Commissioners should continually strive to improve their land use knowledge and skills.

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As Milpitas City officials, it is important that Commissioners dress professionally. During the summer months, from July through September, Commissioners may dress for very warm weather, however, attire should be appropriate for public meetings. ¶

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As funding is available, members of the Planning Commission are encouraged to annually attend the League of California Cities Planner’s Institute and may additionally attend the League’s Annual Conference. Alternatively, and subject to available funding, Planning Commissioners may choose to attend local conferences or trainings rather than the League’s Conference if: (1) the conference or training is related to planning issues

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applicable in Milpitas, and (2) the amount of money expended by any one Commissioner does not exceed the cost of attending the two League Conferences, as budgeted for the year.

6.10 Meeting Preparation

The General Plan is the City’s vision for itself and all Planning Commission decisions must be consistent with it. The Zoning Ordinance is a tool used by the Commission to implement the General Plan. These are Council approved documents and legally binding. It is the responsibility of each Planning Commissioner to read and comprehend both the General Plan and the Zoning Ordinance in order to make sound decisions on issues brought before the Commission.

The effectiveness of the Planning Commission requires the Commissioners thoroughly prepare themselves prior to a public meeting. This may include research or calling upon city Planning staff for clarification and understanding of what is to be discussed.

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6.11 Meeting Participation

Each Commissioner’s input is important and valued. All Commissioners in attendance are expected to participate.

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6.12 Position Justification

Public decisions must be accompanied with coherent reasons, as statements are incorporated into the legal record.

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6.13 Staff and Commissioner Roles

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Staff’s Role

Planning staff’s role is to provide the Commission with the information it needs to make an independent decision and to provide the Commission with a professional recommendation supported with analysis. Staff’s responsibilities include public noticing and reviewing of applications for completeness and compliance with all local and state codes, including the California Environmental Quality Act (CEQA). In addition, staff shall assist with facilitating meetings.

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Commissioner’s Role

A Planning Commissioner’s role is to review the information provided by staff, evaluate written and oral testimony provided by the general public and the applicant, to analyze the project proposal itself, and to make an independent decision which is in the best interests of the City and in conformance with applicable laws and regulations.

6.14 The Brown Act

The Brown Act is the California Open Meeting Law. The Planning Commission and Commissioners are subject to its provisions. Commissioners with questions should contact the City Attorney, the Planning Commission Chair or Planning staff.

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6.15 Addressing Others

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The appropriate title should be used when acknowledging a meeting participant, such as “Mr.”, “Ms.”, “Commissioner”, “Chair”, “Vice-Chair”, etc. This shows respect, professionalism and avoids the appearance of favoritism.

6.16 Conflicts of Interest/Code of Ethics

The City Attorney may be able to provide advice on avoiding legal and perceived conflicts of interest. Questions on a possible conflict should be addressed to the City Attorney prior to the meeting. Any member of the Planning Commission who has a conflict of interest with an item on the agenda shall excuse him or herself prior to the introduction of the agenda item, as required by law.

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If at a meeting, an unresolved issue arises as to whether a Planning Commissioner may have a conflict of interest on an agenda item, the Planning Commission may seek the advice of the City Attorney. The Planning Commission may continue the item to a future agenda for resolution of the matter, with consideration of any applicable Permit Streamlining Act provisions.

Each Commissioner should work towards maintaining the highest actual and perceived integrity level while sitting on the Commission. In addition, Planning Commissioners shall adhere to any applicable local regulations governing ethical conduct adopted by the City of Milpitas.

Deleted: the Code of Ethics adopted by City Council Resolution 2714, attached in the Appendix.

Section 7 – Subcommittees

7.01 Creation of Subcommittees

Per Milpitas Municipal Code Section I-500-1.13, the Planning Commission is authorized to create subcommittees composed of at least two (2) members of the Planning Commission.

7.02 Duties

The duties of any Subcommittee established by the Planning Commission shall be as proscribed by the Planning Commission at the time of the formation of the Subcommittee.

7.03 Meetings

To the extent possible, each Subcommittee meeting shall be held prior to the start of a regularly scheduled Planning Commission meeting.

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7.04 Attendance

Each Subcommittee shall consist of two (2) members and an alternate. Attendance of the two (2) members at Subcommittee meetings is required and attendance of the alternate is highly recommended.

7.05 Terms

Subcommittee terms shall be a period of six months. At a regularly scheduled Planning Commission meeting, prior to the beginning of a new term, Planning staff shall announce

Commented [11]: We have increased this from the previous duration, which was three months.

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the Subcommittee members serving on the upcoming term based on the rotation schedule below.

In order to avoid, where possible, having recently-appointed Planning Commissioners with no previous experience on the Planning Commission serving on the Subcommittee, each member of the Planning Commission shall begin his/her service on the Subcommittee as an alternate member for one term.

7.06 Inability to Serve Due to Conflicts of Interest

In order to maintain the effectiveness of the Subcommittee, each Commissioner, prior to becoming a Subcommittee member, shall consult with the Planning staff and City Attorney to determine the likelihood of facing regular conflicts. Should a Commissioner determine, based on the advice of the City Attorney, that she or he is likely to face regular conflicts of interest, the Commissioner shall abstain from participating on the Subcommittee as either a member or alternate. If a member cannot participate on the Subcommittee due to such a conflict, the Planning Commission Chair shall serve in his or her place. If the Chair cannot serve due to a conflict, then the Planning Commission Vice-Chair shall serve. If neither the Chair nor Vice Chair can serve due to such conflicts, the Commissioner with the longest years of service shall serve.

7.07 Planning Commission Representation on City Subcommittees

Upon the request of the City Council or City staff, Planning Commission representation may be required on various City subcommittees, such as the Transportation Subcommittee and the Flood Plain Subcommittee. The appointment of a representative shall be made annually by the majority vote of the Planning Commission unless a particular representative has been specified by the City Council.

Commented [12]: We have removed the rotation table, which is unnecessary, as the Subcommittee membership can be tracked by staff.

Commented [13]: This provision had previously only applied in the event a Commissioner was in a real estate related profession. Conflicts may arise for reasons other than profession in a real estate field – there is no reason to limit it.

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